

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENTNOTICE OF EMERGENCY RULEMAKING

The Director of the Department of Housing and Community Development, pursuant to the authority set forth in §252 of Public Law 99-154, the Tax Reform Act of 1986, as amended and Mayor's Order No. 87-72, hereby gives notice of his intent to amend, on an emergency basis, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register, Title 10 of the District of Columbia Municipal Regulations (DCMR), Chapter 34, Low Income Housing Tax Credit Program (LIHTC). Specifically, the deletion of Subsection 3401.4 and the addition of Subsection 3406.

The purpose of the amendment is to (1) remove the provisions for an application fee in this section of the regulations and (2) designate a separate section for the establishment and collection of application fees, reservation fees, allocation fees, and monitoring fees.

The emergency action is necessary because the LIHTC program has helped finance over 10,000 units of rental housing, between 1987 and 2003, for families earning between 50 and 60 percent of the area median income. As the LIHTC program requires annual monitoring of the properties and income certification of the tenants assisted, the failure of DHCD, as the designated LIHTC allocation and compliance organization for the District of Columbia would mean that an estimated minimum of 800 households annually would be at risk of being homeless and not finding decent, safe and affordable housing. Additionally, the existing 10,000 units would be subject to recapture of the allocated LIHTCs placing these families at risk of homelessness.

The immediate establishment of these pivotal fees are necessary to the District of Columbia's ability to continue its Low Income Housing Tax Credit Program in full compliance with Title 42 of the Internal Revenue Code and thus the financial integrity of every LIHTC previously issued by the District of Columbia.

This emergency rule shall take effect immediately upon publication in the D.C. Register and shall expire 120 days from the effective date, or upon publication of the Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

Section 3400 of Chapter 34 (Low Income Housing Tax Credit Program) of Title 10 DCMR, is amended as follows:

Subsection 3401.4 is deleted in its entirety.

A new Subsection 3406 is added to read as follows:

Program Fees

- 3406.1 Application Fee - The Department may establish an application fee as follows:
- (a) For non-profit developer applicants, the application fee shall not exceed two hundred dollars (\$200.00); and
 - (b) For other developer applicants, the application fee shall not exceed five hundred dollars (\$500.00)
- 3406.2 Reservation Fee - The Department may establish an reservation fee as follows:
- A reservation fee for each applicant shall be charged at a rate of one percent (1%) of the annual credit allocation.
- 3406.3 Allocation Fee - The Department may establish an allocation fee as follows:
- An allocation fee for each applicant shall be charged at a rate of two percent (2%) of the total annual tax credit allocation.
- 3406.4 Monitoring Fee - The Department may establish a monitoring fee as follows:
- A monitoring fee shall be charged to each project in an amount of at least Thirty-five Dollars (\$35.00) for each LIHTC unit of any LIHTC financed project per year of the LIHTC compliance period.

Section 3499 is amended to add the following definitions:

Compliance Period - Section 42 of the IRS code requires that units funded with the LIHTC program remain affordable for 15 years. To preserve affordability of units receiving LIHTC assistance, DHCD has added an additional 15 year extended use affordability period, for a total of 30 years. This action is required by Section 42.

Low Income Housing Tax Credit -

The Low Income Housing Tax Credit Program (LIHTC), created pursuant to section 42 of the Internal Revenue Code is a subsidy for the development and operation of affordable rental housing offered through the Internal Revenue Tax Code. The LIHTC program offers a credit to offset the tax liability of owners and investors in eligible low-income rental housing developments.

The Tax Reform Act of 1986, as amended, established the federal Low Income Housing Tax Credit Program ("LIHTC"), to encourage private investment for the construction and rehabilitation of affordable housing to benefit low and moderate income individuals and families. Section 42 of the Internal Revenue Code sets forth the rules and regulations of the LIHTC Program and mandates the compliance and monitoring activities required by states and the District of Columbia. DHCD, by Mayor's Order 87-72, is the District's delegated agency with the authority and responsibility of administering the LIHTC Program.

Reservation fee – is collected when an eligible project meets the 10 percent spending threshold required under Section 42. At this time a reservation of LIHTCs is set-aside for the particular project, subject to its completion and compliance with LIHTC requirements.

Allocation fee - is collected when an eligible LIHTC project is placed in service and has submitted its cost certification detailing the project costs eligible to be included in the LIHTC basis.

Monitoring fee – is collected annually for each available LIHTC unit during the LIHTC and extended use compliance period,